Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

AT&T REPLY TO OPPOSITIONS TO ITS PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and its Public Notice dated July 29, 1997 and published in the Federal Register on August 1, 1997 (62 Fed. Reg. 41386), AT&T Corp. ("AT&T") hereby files its reply in support of its petition for reconsideration of the *Access Reform Order*.[1] By separate pleading filed today, AT&T also files a reply in support of its petition for reconsideration of the May 8, 1997 *Universal Service Order*.[2]

---

[1] *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, released May 16, 1997, and published in the Federal Register on June 11, 1997 (62 Fed. Reg. 31868), *pets. for review pending sub nom. Southwestern Bell Tel. Co.* v. *FCC*, Nos. 97-2618 et al. (8th Cir.) (*Access Reform Order* or *Order*); *id.*, Order on Reconsideration, FCC 97-247, released July 10, 1997. Appendix A lists the parties filing oppositions and the abbreviations used to identify them herein.

[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and (continued...)

In its Petition for Reconsideration, AT&T demonstrated that the Commission should: (1) raise the cap for Subscriber Line Charges ("SLCs") for multiline business and non-primary residential lines to permit full recovery of all marketing expenses from end users; (2) clarify that the exemption from the transport interconnection charge ("TIC") for minutes not carried over an incumbent local exchange carrier's ("LEC's") transport facilities became effective as of July 1, 1997; and (3) amend its rules to ensure that incumbent LECs do not double recover trunk port costs where such ports are used for both traditional interexchange and unbundled network element ("UNE") based traffic. AT&T Petition at 8-14. The commenters generally support these proposals, and although a few commenters oppose them, their arguments are meritless.

I. THE COMMISSION SHOULD INCREASE THE CAPS ON THE SUBSCRIBER LINE CHARGE FOR MULTILINE BUSINESSES AND NON-PRIMARY RESIDENTIAL LINES TO PERMIT RECOVERY OF ALL ILEC RETAIL EXPENSES FROM END USERS.

As AT&T showed in its Petition, the Commission should raise the caps on the SLC for multiline business and non-primary residential lines to ensure that all retail marketing and

---

[2] (...continued)
Order, FCC 97-157, released May 8, 1997, and published in the Federal Register on June 17, 1997 (62 Fed. Reg. 32862), *pets. for review pending sub nom. Texas Office of Public Utility Counsel* v. *FCC*, Nos. 97-60421 et al. (5th Cir.) (*Universal Service Order*); *id.*, Order on Reconsideration, FCC 97-246, released July 10, 1997; *id.*, Second Order on Reconsideration, FCC 97-253, released July 18, 1997. Several commenters have addressed issues relating to the need for an end user surcharge to recover universal service contributions in their *Access Reform* pleadings, and AT&T will address those arguments in its separate pleading in the *Universal Service* docket. *See* RTC at 2-5; API at 4-6; MCI at 18; CPI at 13. Nonetheless, AT&T hereby incorporates by reference both its opposition and reply to petitions for reconsideration of the *Universal Service Order*.

other retail expenses are recovered directly from end-users, rather than from interexchange carriers ("IXCs") through presubscribed interexchange carrier charges ("PICCs") and/or carrier common line charges ("CCLCs"). AT&T Petition at 8-10. AT&T also demonstrated that, to be consistent with principles of cost-causation, the Commission should remove certain other expenses from access charges in addition to those in Account 6610. *Id.*; *see Order*, ¶ 320.[3]

In a failed attempt to refute AT&T's analysis, BellSouth argues that AT&T has not "conclusively" shown a "nexus" that establishes that these additional expenses are retail costs. BellSouth at 3-4. To the contrary, the Commission has previously recognized that such costs are indeed avoidable retail costs, and therefore it is appropriate in this context to exclude them from access charges.[4] Moreover, BellSouth offers no evidence establishing any "nexus" to interexchange services other than the mere fact that such costs end up in the interstate jurisdiction by operation of the separations process. Both the Federal-State Joint Board and the Commission, however, have concluded that the current rules in this respect are unreasonable, and the Commission has thus referred the matter to the Joint Board for

---

[3] CompTel at 14-15; *see also* Sprint at 2 (arguing that rulemaking is necessary, and that SLC caps should be raised for all lines).

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 (1996), at ¶¶ 917-18 ("*Local Competition Order*") (discussing Section 251(c)(4) standard concerning wholesale discount for local service).

consideration of changes in the separations rules.[5] In the interim, therefore, the Commission should amend its rules to ensure that all such costs are recovered directly from end users.[6]

Moreover, the Commission should reject USTA's proposal to permit incumbent LECs to recover marketing expenses from all lines through a combination of SLCs and PICCs (and, if necessary, CCLCs).[7] USTA's proposal is wrong on two counts. First, as the Commission found in the *Order*, the record fully supports a finding that LEC marketing is directed at multiline business and non-primary residential lines. *Order*, ¶ 321. Second, permitting the recovery of any of these marketing expenses through carrier charges (such as PICCs) would be inconsistent with cost-causation principles and would distort competition in the interexchange market. *See Order*, ¶¶ 319-22. The Commission should therefore adopt AT&T's proposal and reject USTA's.

---

[5] *See Order*, ¶ 317; *Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, CC Docket No. 86-297, Recommended Decision and Order, 2 FCC Rcd. 2582 (1987).

[6] Bell Atlantic's related argument that AT&T's proposal is a "backdoor way to challenge the fundamental federal-state separations policy of recovering a portion of per-line costs through interstate access rates" is baseless. Bell Atlantic at 13-14. AT&T's proposal concerns only marketing costs that have been allocated to the interstate jurisdiction, and would be recovered solely through the federally imposed SLCs.

[7] *See* USTA Petition at 7-8; *see also* Ameritech at 2; U S WEST at 5-6; SNET at 3; Sprint at 2; Ad Hoc at 3-5; Bell Atlantic at 11-14; BellSouth at 2-3.

II. THE COMMENTS CONFIRM THAT THE EXEMPTION FROM THE TIC FOR COMPETITIVE ACCESS PROVIDERS SHOULD BECOME EFFECTIVE JULY 1, 1997.

Many commenters agree with AT&T that the effective date of the Commission's new rule exempting competitive access providers ("CAPs") from paying the TIC should be July 1, 1997.[8] Although some commenters do take issue with AT&T's position, their arguments are meritless.

For example, a few commenters argue that the exemption should not take effect at all, either immediately or on January 1, 1998,[9] but these arguments miss the mark. The exemption applies by its terms where CAPs are not "utilizing the local exchange carrier's transport service," and thus are not using the LEC's transport facilities. 47 C.F.R. § 69.155(c). Continuing to allow a LEC to assess the TIC on carriers that do not use the LEC's transport facilities would force "competitors of the incumbent LEC to pay some of the incumbent LEC's transport costs." *Order*, ¶ 240. As the Commission correctly found, the previous rule was a serious impediment to competition in the access market, and minutes that traverse a CAP's network should now be exempt from the TIC. *Id.*

Moreover, no party advances any reason why the exemption should not become effective immediately rather than on January 1, 1998. As GTE frankly acknowledges, the per-minute "residual" TIC represents the FCC's "policy decision to continue subsidizing

---

[8] 47 C.F.R. § 69.155(c). *See* MCI at 15; LBC at 1-2; Hyperion at 2-4; TRA at 15; TW Comm. at 15-16. *See also* TCG Petition at 2-4.

[9] Bell Atlantic at 6-8; GTE at 12-13; USTA at 7-8.

small [interexchange] carriers during the TIC transition period," and "thus is a subsidy." GTE at 12. Assessing a pure subsidy element on CAP minutes, however, has a severely detrimental impact on competition in the access market, and indeed would seriously threaten the Commission's so-called "market-based" approach to access reform. Thus, the Commission quite properly concluded that, insofar as CAP minutes are concerned, the pro-competitive goals of the 1996 Act now outweigh the Commission's previous policy of subsidizing smaller interexchange carriers. *Order*, ¶ 240. The fundamental point, however, is that the TIC is just as much an unwarranted subsidy *now* as it will be on January 1, 1998, and therefore, consistent with the Commission's reasoning in the *Order*, the exemption should become effective immediately.

Finally, there is no merit to Bell Atlantic's suggestion that immediate application of the CAP exemption "would effectively disallow costs that the LECs continue to incur." Bell Atlantic at 7-8. The CAP exemption rule does not "disallow" any costs. What Bell Atlantic is actually complaining about is the fact that a system of price cap regulation does not guarantee any LEC full recovery of any particular set of costs. As MCI put it in its recent opposition to NYNEX's motion to stay application of this rule, incumbent LECs are free to recover these costs "subject to price caps, PICC caps, competition, and the [CAP exemption] rule."[10] Indeed, GTE concedes that the CAP exemption means only that LECs may have to

---

[10] *Access Charge Reform*, CC Docket No. 96-262, MCI's Opposition to the NYNEX Petition for a Partial Stay, pp. 8-9 (filed August 8, 1997) ("The Commission does not guarantee that any particular incumbent LEC will be able to collect all the

(continued...)

resort to "rate increases for transport customers (if allowed under the price cap rules)." GTE at 13. Far from disallowing legitimate costs, the CAP exemption properly relieves competitors from having to pay the incumbent LEC's transport costs in addition to their own.

III. THE COMMISSION SHOULD AMEND ITS RULES TO PROHIBIT DOUBLE RECOVERY OF TRUNK PORT COSTS.

Finally, AT&T demonstrated in its Petition that, because the LECs' UNE switching rates already include full recovery of trunk port costs but the *Order* requires the LECs to assess a separate trunk port charge to IXCs purchasing access, the LECs will double recover when a trunk port is used for both traditional and UNE-based interexchange traffic, unless the trunk port charge is proportionally reduced to account for the fact that the LEC is already recovering some of those costs from CLECs. AT&T Petition at 12-14. Although no party disputes this analysis,[11] a few commenters erroneously take issue with AT&T's proposed solution.

---

[10] (...continued)
interconnection charge revenues permitted any more than it guarantees that incumbent LECs will be able to collect access charges at the highest rate permitted under the price cap rules.").

[11] MCI at 23 (agreeing with AT&T); Bell Atlantic at 22 (not disputing AT&T's analysis but offering a different solution); Ameritech at 5-7 (arguing only that AT&T's analysis does not apply to Ameritech). Sprint expressly agrees with AT&T's analysis of the problem, but argues that AT&T's proposed solution is not "practical" and "easily administered." Sprint at 3-4. Sprint does not explain, however, why it thinks AT&T's proposal is not workable. *See* AT&T Petition at 13-14.

For example, Bell Atlantic essentially concedes that double recovery will result, but it argues that the appropriate solution is to fold the trunk port charges back into the per-minute switching charge in order to avoid "burdensome tracking" requirements. Bell Atlantic at 23. Bell Atlantic's "solution," however, is no solution at all. Under either AT&T's or Bell Atlantic's approach, there must be a calculation of the percentages of traditional interexchange traffic and UNE-based traffic. Moreover, such a calculation is not "burdensome" or "complicated." To the contrary, AT&T's proposal is simply an extension of the existing PIU (percent interstate usage) system, which is presently used to pro-rate various access charges between interstate and intrastate traffic. More importantly, however, AT&T's proposal, unlike Bell Atlantic's, retains the flat-rated trunk port charge, which the Commission has found to be more consistent with principles of cost-causation. For these reasons, Bell Atlantic's counter-proposal represents the worst of all worlds and should be rejected.

Similarly meritless is Ameritech's claim that, because it has established separate rate elements for unbundled trunk ports and unbundled local switching in its UNE rate structure, AT&T's analysis is therefore inapplicable to Ameritech as a factual matter. Ameritech at 5-7. Even if a LEC establishes a separate rate element for unbundled trunk ports in its UNE rate structure, that would not solve the problem in a situation where a carrier is functioning as both a CLEC and a traditional interexchange carrier. In that instance, a carrier may purchase a dedicated trunk to a LEC's end office that carries both traditional and UNE-based interexchange traffic. If the UNE trunk port charge differs from that in the access tariff, the

applicable trunk port charges must still be pro-rated on the basis of relative usage. Therefore, the Commission should clarify that LECs must pro-rate the separate trunk port charges, or alternatively the lower of the two charges should apply to the entire trunk group.

CONCLUSION

To the extent and for the reasons stated above and in AT&T's Petition and Opposition, the Commission should reconsider and clarify the *Access Reform Order*.

Respectfully submitted,

/s/ Judy Sello
Mark C. Rosenblum
Peter H. Jacoby
Judy Sello

Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-8984

Gene C. Schaerr
James P. Young

1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8141

September 3, 1997

ACCESS CHARGE REFORM
CC DOCKET 96-262
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

Ad Hoc Telecommunications Users Committee, et al. ("Ad Hoc")

American Petroleum Institute ("API")

Ameritech

AT&T Corp. ("AT&T")

Bell Atlantic

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth")

Boston University ("BU")

Competition Policy Institute ("CPI")

Competitive Telecommunications Association ("CompTel")

General Communications, Inc. ("GCI")

GTE Service Corporation ("GTE")

State of Hawaii ("Hawaii")

Hyperion Telecommunications, Inc. ("Hyperion")

KMC Telecom, Inc. ("KMC")

LBC Communications, Inc. ("LBC")

MCI Telecommunications Corporation ("MCI")

Rural Telephone Coalition (NRTA, NTCA, OPASTCO) (collectively, "RTC")

The Southern New England Telephone Company ("SNET")

Sprint Corporation ("Sprint")

Telecommunications Resellers Association ("TRA")

Teleport Communications Group, Inc. ("TCG")

Time Warner Communications Holdings Inc. ("TW Comm")

United States Telephone Association ("USTA")

U S WEST, Inc. ("U S WEST")

WorldCom, Inc. ("WorldCom")

CERTIFICATE OF SERVICE

I, James P. Young, do hereby certify that on this 3rd day of September, 1997, a copy of the foregoing AT&T Reply to Oppositions to Its Petition for Reconsideration was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

/s/ James P. Young
James P. Young

SERVICE LIST

James S. Blaszak
Kevin S. DiLallo
Levine, Blaszak, Block & Boothby, LLP
Suite 500
1300 Connecticut Ave., NW
Washington, DC 20036
Attorneys for Ad Hoc Telecommunications Users Committee

Wayne V. Black
C. Douglas Jarrett
Susan M. Hafeli
Keller and Heckman LLP
Suite 500 West
1001 G Street, NW
Washington, DC 20001
Attorneys for American Petroleum Institute

Michael S. Pabian
Larry A. Peck
Ameritech
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Edward Shakin
Joseph DiBella
Bell Atlantic Telephone Companies
Eighth Floor
1320 North Court House Rd.
Arlington, VA 22201

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation
BellSouth Telecommunications, Inc.
Suite 1700
1155 Peachtree Street, NE
Atlanta, GA 30309-3610

Robert Glass
Boston University
11 Vincent Street
Cambridge, MA 02140

Ronald Binz
Debra Berlyn
John Windhausen, Jr.
Competition Policy Institute
Suite 310
1156 15th Street, NW
Washington, DC 20005

Robert J. Aamoth
Edward Yorkgitis, Jr.
Joan M. Griffin
Kelley Drye & Warren, LLP
Suite 500
1200 19th Street, NW
Washington, DC 20036

Genevieve Morelli
The Competitive Telecommunications Association
Suite 800
1900 M Street, NW
Washington, DC 20036

Kathy L. Shobert
General Communication, Inc.
Suite 900
901 15th Street, NW
Washington, DC 20005

Ward W. Wueste
Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, NW
Washington, DC 20036

R. Michael Senkowski
Jeffrey S. Linder
Gregory J. Vogt
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Attorneys for GTE Service Corporation

Herbert E. Marks
James M. Fink
Squire, Sanders & Dempsey, L.L.P.
PO Box 407
1201 Pennsylvania Ave., NW
Washington, DC 20044
Attorneys for The State of Hawaii

Dana Frix
Tamar Haverty
Swidler & Berlin, Chartered
Suite 300
3000 K Street, NW
Washington, DC 20007
Attorneys for Hyperion Telecommunications, Inc.

Christopher Rozycki
Hyperion Telecommunications, Inc.
DDI Plaza Two
Suite 400
500 Thomas Street
Bridgeville, PA 15017

*Russell M. Blab
Kaman M. Hawaii
Attorneys for KMC Telecom Inc.

Daniel S. Goldberg
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036
Attorneys for LBC Communications, Inc.

Bradley Stillman
Don Sussman
Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Margot Smiley Humphrey
Koteen & Naftalin, LLP
Suite 1000
1150 Connecticut Ave., NW
Washington, DC 20036
Attorney for Rural Telephone Coalition (NRTA)

David Cosson
L. Marie Guillory
2626 Pennsylvania Ave., NW
Washington, DC 20037
Attorneys for Rural Telephone Coalition (NTCA)

Lisa M. Zaina
Stuart E. Polikoff
Suite 700
21 Dupont Circle, NW
Washington, DC 20036
Attorneys for Rural Telephone Coalition (OPASTCO)

Wendy S. Bluemling
The Southern New England Telephone Company
227 Church Street
New Haven, CT 06510

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
11th Floor
1850 M Street, NW
Washington, DC 20036

*Unable to serve.

Charles C. Hunter
Catherine M. Hannan
Hunter Communications
Law Group
Suite 701
1620 I Street, NW
Washington, DC 20006
Attorneys for
Telecommunications
Resellers Association

J. Manning Lee
Vice President, Regulatory
Affairs
Teleport Communications
Group, Inc.
Suite 300
Two Teleport Drive
Staten Island, NY 10311

Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Attorneys for Time
Warner Communications
Holdings Inc.

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone
Association
Suite 600
1401 H Street, NW
Washington, DC 20005

Robert B. McKenna
Jeffry A. Brueggeman
U S WEST, INC.
Suite 700
1020 19th Street, NW
Washington, DC 20036

Peter A. Rohrbach
David L. Sieradzki
Steven F. Morris
Hogan & Hartson, LLP
555 13th Street, NW
Washington, DC 20004
Attorneys for
WorldCom, Inc.

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt
WorldCom, Inc.
1120 Connecticut Ave., NW
Washington, DC 20036